

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD L. MOSHIER, JR	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 05-180(ERIE)
	)	
UNITED STATES OF AMERICA,	)	JUDGE MCLAUGHLIN
JOHN J. LAMANNA (Former Warden),	)	MAGISTRATE JUDGE BAXTER
DOCTOR BEAM (Doctor at FCI McKean),	)	
DOCTOR OLSON (Doctor at FCI McKean),	)	Electronically Filed
DOCTOR SMITH (Health Administrator),	)	
and JAMES SHERMAN	)	
(FCI McKean Warden),	)	
	)	
Defendants.	)	

**ORDER OF COURT**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2006, upon consideration of Defendants' Partial Motion to Dismiss or, in the Alternative, Partial Motion for Summary Judgment, and upon further consideration of any response thereto,

IT IS ORDERED that defendants' partial motion is **GRANTED**, that the *Bivens* claim of Plaintiff Donald L. Mosher, Jr. (Count II) is dismissed in its entirety, and that Plaintiff's claim pursuant to the Federal Tort Claims Act ("FTCA") (Count I) is dismissed as to defendants Sherman, LaManna, Beam, Olson and Smith, and to the extent that it alleges negligent medical treatment for Plaintiff's gallbladder problems and a growth on the side of his stomach.

IT IS FURTHER ORDERED that the only remaining claim in this lawsuit is Plaintiff's FTCA claim against the United States alleging negligent medical treatment for his Hepatitis C.

\_\_\_\_\_, J.

cc: All parties of record